HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 268 (S/S) year 2003

Km. Subha Laxmi

Versus

Union of India and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 15.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 268(S/S) 2003

Km. Subha Laxmi ….Petitioner

Vs.

Union of India and others ….Respondents

Counsel for the petitioner S.S. Yadav

Dated: - 15-11-2003

Hon'ble Rajesh Tandon, J.

Rule, Respondents waive service. Both the parties agreed that the writ petition may be decided finally.

Heard Shri S.S. Yadav counsel for the petitioner and Shri G.S.Bhist counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ and order commanding the Respondent No.2 to take decision on the representation of the petitioner and give compassionate appointment to the petitioner.

Brief facts giving rise to the represent writ petition are that the father of the petitioner was working as a Scientist 'E' in Defence Electronic Application Laboratory (D.E.A.L.), Raipur Road, Dehradun. The petitioner has stated that unfortunately his father died on 26-6-1998, due to heart attack. Relevant averments of paragraph 3 of the writ petition are mentioned below:-

Paragraph-3"That the petitioner's father was unfortunately died on 26-6-1998, due to heart attack and he left behind him two sons namely Sri Rakesh Kumar and Mahesh Kumar, two daughters

namely K. Sudha Laxmi (Petitioner), Km. Chandresh Laxmi and his widow Smt. Gauri Devi. They filed a joint Affidavit on 27.7.1998 before the Director Defence Electronic Application Laboratory, Dehradun(Respondent NO.2, stating therein that widow and rest family members of the deceased except the petitioner had no objection if Respondent NO.2 give any suitable job to the petitioner in D.E.A.L., Dehradun under Dying in Harness Rules, for the better perusal of this Hon'ble Court a true copy of the joint affidavit dated 27-7-1998 filed by the family members of the deceased is being enclosed herewith and marked as Annexure No.1 to this writ petition."

The petitioner has filed the scheme of the central government which are mentioned in Annexure 2 as Compassionate Appointment of a Widow /Son/ Daughter of Deceased Government Servant / Government Servant retired on medical Ground known as ***Compassionate Appointment of a Widow/Son/Daughter of Deceased Government Servant/ Government Servant Retired on Medical Ground dated 9th December 1993.*** The same is quoted below:

G.I., Dept, Of Personnel and Training, O.M. NO. 14014/6/86-Estt. (D) Dated the 30th June 1987 as amended by O.M. No.14014/20/90-Estt.

(D), dated the 9th December 1993.

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles to be followed in making compassionate appointments of widows/sons/daughters of deceased Government servants. For facility of reference, the orders issued on the subject have been simplified and consolidated in this Office Memorandum.

1- ***"To Whom applicable: -***

(a) To a son or daughter or widow of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family.

(b) In exceptional cases when a Department is satisfied that the condition of a family in indigent and is in great distress, the benefit of compassionate appointment may be extended to a wife/son/daughter of a Government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Service Regulations before attaining the age of 55 years. In case of Group 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years."

(c) To a widow or son or daughter of a Govt. servant who dies during the period of extension in service but not re-employment.

(2) Authority competent to make compassionate appointments:

(a)Joint Secretary in-charge of Administration or Secretary in the Ministry/Department concerned.

(b) In the case of Attached and Subordinate Offices, such power may be exercised by the Head of the Department under Supplementary Rule 2 (10)

(3) Posts to which such appointments can be made;-

" Group 'C' post or a Group 'D' post.

(iii) Ex-servicemen ---- 10% in Group 'C' posts and 20%

	In group 'D' posts subject to proviso 1 of Rule 4 of this Department's Notification NO.39016/1079 Estt.©, dated 15-12-1979 [Ex-servicemen(Re-employment in Central Civil Services and Posts Rules, 1979]
(iv) Physically Hadicapped Persons	***---- 3%***

<u>6. Relaxation:</u>

Compassionate appointment are made in relaxation of the following :-

(a) Recruitment procedure, i.e. without the agency of the Staff Selection Commission or Employment Exchange.

(b) Age-limit wherever necessary . The lower age-limit should not be
Below 18 years of age.
© Educational qualification to the extent stated in para. 4 above.

(c) Clearance from Surplus Cell of this Department/Directorate
General of Employment and Training.

<u>NOTE</u>:- If an employee dies while in service or is issued on invalid pension and there is a ward below 18 years of age and who alone is available for employment, he should apply

for a job as soon as he attains the age of 18 years. The persons below the age of 18 years should not be considered for appointment on compassionate grounds. The upper age limit may, however, be relaxed as hithertofore as per the orders already existing on this subject.

[G.I. ,. Dept., of Per and Trg., O.M. NO.F.14014/23/87 Estt.(D) dated the 17th February 1988].

7. Belated requests for compassionate appointments:

" Ministries/ Departments can also consider the requests for compassionate appointment even where the death took place long ago, say five years or so. While considering such belated requests it should be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. The very fact that the family has been able to manage somehow all these years should normally be adequate proof to show that the family had some dependable means of subsistence. Therefore, examination of such cases calls for a great deal of circumspection . The decision in those cases may be taken at the level of Secretary only."

8. Widow appointed on compassionate grounds getting remarried:-

" A widow appointed on compassionate grounds will be allowed to continue in service even after remarriage.

9. Selective approach:-

(a) The appointments made on grounds of compassion should

Be done in such a way that persons appointed to the post do have the essential educational and technical

qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.

(b)It is not the intention to restrict employment of a widow/son/daughter of deceased Group 'D' employee to a Group'D' appointed to a Group 'C' post for which he/she is educationally qualified, provided a vacancy in Group 'C' exists.

(c) As the appointments have to be cleared at the level of the Head of Department and as all the vacancies are to be posted for compassionate appointment , it may be ensured that subordinate and filed offices get an equitable share in the compassionate appointments.

(d) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government such as the following which have made a significant difference in the financial position of the families of Government servants dying in Harness. The benefits received by the family under these schemes may be kept in view while considering cases of compassionate appointment.

(1) Under the Central Government Employee's Insurance Scheme financial assistance to the family of the deceased Governments servant is as under;-

Group 'D' Employees …Rs 15,000

Group 'C' Employees …Rs 30,000

Group 'B' Employees … Rs 60,000

Group 'A' Employees ….Rs 1,20,000

In addition nearly 2/3 rd of the amount contributed by the Government servant to the fund is also payable along with the above amount.

(2) Benefit of encashment of earned leave to the credit to the deceased Government servant at the time of his death subject to a maximum of 240 days and also encashment of half-pay leave.

(3) Entitlement of additional amount equal to the average balance in the GPF of the deceased Government servant during the three years immediately proceeding the death of the subscriber subject to certain conditions under the Deposits-Linked Insurance Scheme.

The petitioner has stated that Shri R.C.Joshi S/o Shri Janardan Joshi was given the compassionate appointment. paragraph 6 of the writ petition is quoted below:-

<u>Paragraph -6</u>"That the similarly situated person namely Sri Janardan Joshi, Son of late Sri. R.C. Joshi, Resident of 1/5 DEAL . Colony, Raipur Road, Dehradun has been also given compassionate appointment under the Dying in Harness Rules, in the said Office whose father has been died. For the better perusal of this Hon'ble Court a true copy of the affidavit to this effect, dated 28-3-1998 filed by the sister of Sri Janardan Joshi is being enclosed herewith and marked as Annexure No.4 to this Writ Petition."

In paragraph 7 of the writ petition following circumstances has been shown by the petitioner as a result of the death of the bread earner: -

"That the petitioner was residing with her family now she is 27 years old lady and she posses diploma in electronic Educational qualification, and has became major and her father was dies on 26-6-1998 and that time the petitioner was minor but now she has obtained the age of majority and she is unmarried, now position if became very difficult to the petitioner because she is living separately. The petitioner is unmarried, ugly and have very little height about 3-5 Ft. only, nobody is ready to marriage her due to her ugliness and her personality look is very poor and now her mother and brothers behaved to her very cruelly and they say that you are not suitable to reside with the family because your face is so unfortunate if one look or see your face early in the morning then she could not get bread and water in a day, they says that face of the petitioner is not a girl face but a jaunt face. Nobody is ready to marriage to the petitioner and the petitioner any how earning her bread by teaching tuition to the students of the nursery classes and her earning is only 300 or 400 in the month and in this way she is hardly getting meal for her life. Now due to hardships facing by the petitioner, she is unable to purchase cloths for her from the marked, now she is facing hardships in her life. She mostly says that if my father is alive today, then he cannot see the poor position of his daughter which is now . The mother, brothers, and sister in law of the petitioner are misbehaving to her so the case of the petitioner is comes under Dying in Harness and she is in really facing the hardships."

It has been held in Suresh Gaurav Vs. Union of India that there should not be any delay in the compassionate appointment in order to mitigate the hardship due to the death of the father.

After relying upon the judgment of Apex Court it has been held in the state of Manipur Vs. Md. Rajaodin 2003(7) SC page 511. It has been held as under: -

Paragraph 10-" ***As was observed in State of Haryana Vs. Rani Devi [1996(5) SCC 308: 1996 SCC(L&S)1162: JT 1996(6) SC 646] it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of a sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the Scheme regarding appointment on compassionate ground if extended to all types of casual or adhoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of Idia V. Asha Ramchhandra Ambekar [1994(2) SCC 718: 1994 SCC(L&S) 737: 1994 27 ATC 174] it was pointed out that High Courts and Administrative Tribunals cannot conferbenediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect***

thereof do not cover and contemplate such appointments . It was noted in Umesh Kumar Nagpal Vs.State of Haryana [1994(4) SCC 138: 1994 SCC (L&S) 930: 1994 27 ATC 537] that as rule public service appointments and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of an employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased." Paragraph 11-" In Sushma Gosain Vs. Union of India [1989(4) SCC 468: 1989 SCC (L&S) 662: 1989 11 ATC 878] it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be reiterated in Phoolwati Vs. Union of India[1991 Supp.(2) SCC 689: 1992 SCC (L&S) 135: 1991 17 ATC 937] and Union of India Vs. Bhagwan Singh[1995 (6) SCC 476: 1996 SCC (L&S) 33: 1991 (31) ATC 736]Director of Education (Secondary) VS. Pushpendra Kumar[1998(5)SCC 192: 1998SCC(L&S) 1302] it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that

unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. care has,however, to be taken that provision of grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right to those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee.As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

Paragraph 12-" In State of U.P. Vs Paras Nath [1998(2)SCC 412: 1998SCC(L&S) 570] it was held that the purpose of providing employment to the dependent of a government servant dying in Harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was of 17 years."

As will appear from the observations of the Apex Court that the main criteria of the Compassionate Appointment of a Widow/Son/Daughter of Deceased Government Servant/Government Servant Retired on Medical Ground dated 9th December 1993 Rule is to give protection to the family in the event of the death of bread earner.

to give protection to the family in the event of the death of bread earner.

Shri Govind Singh Bisht counsel for the Union of India has very fairly stated that financial position of the family shall be looked into while disposing of the application for compassionate appointment. He has further stated that the authorities shall consider into the financial position of the family while disposing of the application of the petitioner.

In view of the aforesaid facts and circumstances the respondents are directed to consider the claim of the petitioner for compassionate appointment keeping in view the object underlying the provision for grant of compassionate appointment. The object of the compassionate appointment is to facilitate the family of the deceased employee to tide over the sudden crisis due to the death of the bread earner, which has left the family without any means of livelihood. The purpose of providing compassionate Appointment is to mitigate the hardship due to the death of the bread earner.

The petitioner has stated that he has made the application on 27th December 2002 for compassionate appoiontment but the same has not been disposed of.

While disposing of the application, the respondents shall keep in mind the object of the Rule known as Compassionate Appointment of a Widow/Son/Daughter of Deceased Government Servant/Government Servant Retired on Medical Ground dated 9th December 1993.

The respondents are directed to dispose of the application of the petitioner within a period of 3 weeks from the filing of the certified copy of the order.

With the aforesaid observations writ petition is disposed of. There will be no order as to costs.

Dated:- 15-11-2003 **(Rajesh Tandon, J.)**

Mohit